IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2609 of 2007()

CC.342/2007 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
CRIME NO.31/07 OF KASARAGOD POLICE STATION

.....

PETITIONER: ACCUSED:

---

1. HARIPRASAD, S/O.PURUSHOTHAMA RAO, MUNDODU HOUSE, P.O.ULLODI, KASARAGOD TALUK AND DISTRICT.

2. MADHUSUDHANAN RAO, S/O.PURUSHOTHAMA RAO, MUNDODU HOUSE, P.O.ULLODI, KASARAGOD TALUK AND DISTRICT.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT:

---

1. STATE OF KERALA REPRESENTED BY KASARAGOD POLICE STATION, REPRESENTED PUBLIC PROSECUTOR, KERALA HIGH COURT, ERNAKULAM.

2. M/S.SELF EMPLOYEES LEASING AND FINANCE COMPANY LIMITED, M.G.ROAD, KASARAGOD, REPRESENTED BY ITS MANAGER M.SUDHAKARAN, S/O.LATE K.AMBADI.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2609 of 2007

Dated this the 16th day of August, 2007

O R D E R

This Crl.M.C is filed under Section 482 Cr.P.C. Cognizance of the offences punishable, inter alia, under Sections 420 and 468 I.P.C has been taken by the learned Magistrate on the basis of the final report submitted by the police. According to the petitioner, the disputes have been settled and the complainant has compounded the offences allegedly committed by the petitioners. The offences include offences which are not compoundable under Section 320 Cr.P.C. According to the petitioner, notwithstanding the fact that the offences are not compoundable under Section 320 I.P.C, this Court has the requisite powers under Section 482 Cr.P.C. It is therefore prayed that the complainant may be summoned. It may be verified whether he has compounded the offences and thereupon the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner.

2. The prayer cannot be accepted. Normally Section 320 Cr.P.C must hold the field when it comes to composition of offence. An offence not compoundable under Section 320 Cr.P.C shall not normally be permitted to be compounded. Of course, the decision in **B.S.Joshy**

v. State of Haryana [A.I.R (2003) SC 1386] stipulates the composition of a matrimonial dispute subsequently can be taken into account to quash the proceedings under Section 498 A I.P.C though that offence is not compoundable. But the said decision cannot be taken as authority for the proposition that the distinction between compoundable and non compoundable offences is obliterated. Because of the peculiar nature of the facts in **B.S.Joshy v. State of Haryana** [A.I.R (2003) SC 1386] and in the interests of justice, it was held that the sweep of powers under Section 482 Cr.P.C is not in any way fettered by the stipulations of Section 320 Cr.P.C. That certainly is not the situation in this case.

3. According to me, the petitioner must appear before the learned Magistrate. If charges have not already been framed, they can of course advance a contention that charges are liable to be framed only for compoundable offences. If they succeed in that contention, they can make an appropriate application for composition. The present prayer is not sustainable at all. This Crl.M.C. is dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-